IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

CRL.A.No. 766 of 2000()

AGAINST THE ORDERDT. 15.7.2000 IN CC.72/1998 OF CHIEF JUDICIAL MAGISTRATE FIRST CLASS – II, KOTTARAKKARA.

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APPELLANT: COMPLAINANT

G.RAJASEKHARAN,
R.S. NILAYAM, MANNAMPARAMBU,
CHADAYAMANGALAM.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS: ACCUSED AND STATE

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1. **K.MADHU, PROPRIETOR,**
   KAIRALI FOOD PRODUCTS,
   BINDU SADANAM,
   CHADAYAMANGALAM

2. **STATE OF KERALA,**
   REP.BY THE DIRECTOR OF PROSECUTIONS,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.766 OF 2000

Dated 28th February, 2007

JUDGMENT

This appeal is filed against an order of acquittal under section 256(1) of the Code of Criminal Procedure. The appellant filed a complaint under section 138 of the Negotiable Instruments Act contending that a cheque issued by the first respondent/accused was dishonoured for insufficiency of funds. There were several postings in the case and complainant was present on those occasions, but, on 15.7.2000 since the complainant was absent, the accused was acquitted under section 256(1) Cr.P.C. even though accused was also absent. The notice issued from this court was also not able to be served on the first respondent. Even though trial court has got power to acquit the accused for the absence of the complainant under section 256(1) Cr.P.C., it cannot be done mechanically. In this case, according to the appellant, when the case was posted on 15.7.2000, due to strike, there were no road transport services in the place where he was residing and, therefore, he was unable to attend the court on the same day. In the above circumstances, acquittal of the accused was not warranted and, hence, the

order of acquittal is set aside. The appellant/complainant shall appear before the trial court on 26.3.2007. Fresh steps should be taken to serve notice on the accused.

The appeal is allowed by way of remand.

J.B.KOSHY
Judge

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